

ORIGINAL

FILED

2008 JUN -5 AM 10:14

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY KNA DEPUTY

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8 **UNITED STATE DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10
11 **DAVID SANTOYO,**
12 **Plaintiff,**

13 **vs.**

14 **MANUEL SOTO JR., JAMES**
15 **SILBERMAN, JUAN RAMON**
16 **SALAZAR, AND DOES 1 TO 10,**
17 **Defendants.**

Case No.: **08 CV 1000 W BLM**

COMPLAINT FOR
DAMAGES FOR PERSONAL
INJURIES

DEMAND FOR JURY TRIAL

18
19 **COMPLAINT**

20
21 PLAINTIFF DAVID SANTOYO, complains and alleges against Defendants
22 MANUEL SOTO JR., JAMES SILBERMAN, JUAN RAMON SALAZAR, AND
23 DOES 1 through 10 as follows:

24
25 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**
26
27
28

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times herein mentioned defendants, MANUEL SOTO JR., JAMES SILBERMAN, JUAN RAMON SALAZAR, and each of them, are, and were, residents of the County of San Diego, State of California.

4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOE defendants 1 through 10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when same shall have been ascertained. PLAINTIFF is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that PLAINTIFF'S injuries as herein alleged were proximately caused by the acts and/or omissions of said fictitiously named defendants.

(Negligence)

5. Plaintiff hereby repeats, re-alleges and incorporates the allegations contained in paragraphs 1 through 4 as though fully set forth herein.

6. Plaintiff is informed and believes, and based thereupon alleges, that at all times herein mentioned, defendant, Manuel Soto was, and were the owner and operator of a 2003 Maxum/Ski.

7. Plaintiff is informed and believes, and based thereupon alleges, that at all times herein defendant, James Silberman, Juan Ramon Salazar, and each of them, are, and were, the owners and operators a Yamaha Waverider. Plaintiff is further

1 informed and believes, and based thereupon alleges, that defendant, James
2 Silberman, entrusted his Yamaha Waverider with Juan Ramon Salazar, who had no
3 prior experience in operating such equipment.

4 8. On or about June 10, 2006, plaintiff, David Santoyo was being towed on an
5 inner tube attached to a Maxum/Ski boat owned and operated by Defendant
6 Manual Soto Jr.

7 9. Plaintiff is further informed and believes, and based thereupon alleges, that
8 at all times herein mentioned, and while on the navigable waters of Senator's
9 Wash, defendant, Manual Soto Jr. negligently, carelessly, and recklessly operated,
10 entrusted, managed, maintained, controlled, equipped, owned and used said vessel
11 so as to cause plaintiff to collide into the Yamaha Waverider operated by
12 defendant, Juan Ramon Salazar, resulting in serious and permanent injuries to
13 plaintiff.

14 10. At said time and place, Defendant Manual Soto Jr., used said vessel in a
15 reckless and negligent manner so as to endanger the life and limb of his plaintiff
16 and his passengers in violation of Harbors & Navigation Code Section 655(a).

17 11. At said time and place, Defendant Manual Soto Jr., used said vessel without
18 keeping a proper look out in violation of Rule 5; lookout.

19 12. At all times herein mentioned, defendant Manual Soto Jr. operated the
20 above-described vessel in a highly reckless manner and at a grossly excessive rate
21 of speed while rounding an island, with absolute and conscious disregard and
22 callous indifference to the rights and safety of plaintiff and with awareness of the
23 risk of injury thereby caused, all of which in violation of Harbors & Navigation
24 Code Section 655(a).

25 13. Plaintiff is further informed and believes, and based thereupon alleges, that
26 at all times herein mentioned, and while on the navigable waters of Senator's
27 Wash, defendant, Juan Ramon Salazar negligently carelessly, and recklessly
28 operated, managed, maintained, controlled, equipped, and used the Yamaha

1 Waverider so as to collide into Plaintiff, resulting in serious and permanent
2 injuries to plaintiff.

3 14. At all times herein mentioned, defendant Juan Ramon Salazar operated the
4 Yamaha Waverider in a highly reckless manner by shutting off the PWC when he
5 saw Defendant Soto's boat in front of him, disabling its maneuvering capability
6 and jumping into the water, knowing that the PWC would collide into plaintiff.
7 This operation was with absolute and conscious disregard and callous indifference
8 to the rights and safety of plaintiff and with awareness of the risk of injury thereby
9 caused.

10 15. Plaintiff is further informed and believes, and based thereupon alleges, that
11 at all times herein mentioned, and while on the navigable waters of Senator's
12 Wash, defendant, James Silberman negligently and carelessly entrusted, managed,
13 maintained, controlled, equipped, and used the Yamaha Waverider by allowing
14 Defendant Juan Ramon Salazar to operate his Yamaha Waverider, despite
15 knowledge that Salazar has no prior experience in operating the Waverider alone,
16 and further knowledge of the traffic in the waters on said date.

17 16. As a direct and proximate result of the negligence and carlessness of
18 defendants, and each of them, as hereinfore alleged, plaintiff DAVID SANTOYO,
19 was hurt and injured in his health, strength and activity, in all parts of his body, and
20 sustained shock and injury to his nervous system and person, all of which injuries
21 have caused and continue to cause plaintiff great mental, physical and nervous
22 anxiety, and pain and suffering. Plaintiff, DAVID SANTOYO, is informed and
23 believes, and based thereupon alleges, that said injuries resulted in permanent
24 injuries to plaintiff, in an amount to be proven at trial. Plaintiff is informed and
25 believes, and thereupon alleges, that the amount in controversy in excess of
26 Seventy Five Thousand Dollars (\$75,000.00) and within the jurisdiction of this
27 Court.
28

1 17. As a further direct and proximate result of the negligence, carelessness, and
2 reckless of defendants, and each of them, as hereinabove alleged, plaintiff, DAVID
3 SANTOYO, was required to and did, employ physicians, surgeons and therapists
4 to treat and care for his injuries and did sustain as a result medical expenses for
5 said medical treatment and care, hospitalization, medicines, and for other and
6 further medical and incidental care, for which plaintiff has incurred liability in an
7 amount yet unascertained. Plaintiff, DAVID SANTOYO, prays leave of Court to
8 amend and/or supplement this Complaint to insert the actual and reasonable value
9 of all medial and incidental expenses when same have been ascertained, or to
10 prove same at time of trial.

11 18. Plaintiff, DAVID SANTOYO, is informed and believes, and based
12 thereupon alleges, that as a further direct and proximate result of the negligence,
13 carelessness, and recklessness of defendants, as hereinabove alleged, she will
14 necessarily require additional medical care, hospitalization, medicines, and other
15 and further medical attention in the future and will incur liability therefrom.
16 Plaintiff, DAVID SANTOYO, prays leave of Court to amend and/or supplement
17 this Complaint to insert the actual and reasonable value of all said additional
18 medical and incidental expenses when same have been ascertained, or to prove
19 same at time of trial.

20 19. As a further direct and proximate result of the negligence, carelessness of
21 defendants, and each of them, as hereinabove alleged, plaintiff, DAVID
22 SANTOYO, became incapacitated and was prevented from following her usual
23 occupation for an undetermined period of time; and as a result thereof, said
24 plaintiff suffered a loss of earnings and earning capacity and ability and other
25 financial losses in an undetermined amount. Plaintiff, DAVID SANTOYO, prays
26 leave of Court to amend and/or supplement this Complaint to include the exact
27 amount of said loss of earnings and earning capacity and ability when ascertained,
28 or to prove same at time of trial.

SECOND CAUSE OF ACTION
(Negligence under General Maritime Law)

20. PLAINTIFF hereby repeats, re-alleges and incorporates the allegations contained in all paragraphs 1 through 20 as though fully set forth herein.

21. At all times herein mentioned, defendants, and each of them were the owners, operators, or others in control of a vessel upon the navigable waterways of Senator's Wash and therefore their conduct falls within the confines of General Maritime Law.

22. Plaintiff is further informed and believes, and based thereupon alleges, that at all times herein mentioned, and while on the navigable waters of Senator's Wash, defendant, Manual Soto Jr. negligently, carelessly, and recklessly operated, entrusted, managed, maintained, controlled, equipped, owned and used said vessel so as to cause plaintiff to collide into the Yamaha Waverider operated by defendant, Juan Ramon Salazar, resulting in serious and permanent injuries to plaintiff.

23. At said time and place, Defendant Manual Soto Jr., used said vessel in a reckless and negligent manner so as to endanger the life and limb of his plaintiff and his passengers in violation of Harbors & Navigation Code Section 655(a).

24. At said time and place, Defendant Manual Soto Jr., used said vessel without keeping a proper look out in violation of Rule 5; lookout.

25. At all times herein mentioned, defendant Manual Soto Jr. operated the above-described vessel in a highly reckless manner and at a grossly excessive rate of speed while rounding an island, with absolute and conscious disregard and callous indifference to the rights and safety of plaintiff and with awareness of the risk of injury thereby caused, all of which in violation of Harbors & Navigation Code Section 655(a).

1 26. Plaintiff is further informed and believes, and based thereupon alleges, that
2 at all times herein mentioned, and while on the navigable waters of Senator's
3 Wash, defendant, Juan Ramon Salazar negligently and carelessly operated,
4 managed, maintained, controlled, equipped, and used the Yamaha Waverider so as
5 to collide into Plaintiff, resulting in serious and permanent injuries to plaintiff.

6 27. At all times herein mentioned, defendant Juan Ramon Salazar operated the
7 Yamaha Waverider in a highly reckless manner by shutting off the PWC when he
8 saw Defendant Soto's boat in front of him, disabling its maneuvering capability
9 and jumping into the water, knowing that the PWC would collide into plaintiff.
10 This operation was with absolute and conscious disregard and callous indifference
11 to the rights and safety of plaintiff and with awareness of the risk of injury thereby
12 caused.

13 28. Plaintiff is further informed and believes, and based thereupon alleges, that
14 at all times herein mentioned, and while on the navigable waters of Senator's
15 Wash, defendant, James Silberman negligently and carelessly entrusted, managed,
16 maintained, controlled, equipped, and used the Yamaha Waverider by allowing
17 Defendant Juan Ramon Salazar to operate his Yamaha Waverider, despite
18 knowledge that Salazar has no prior experience in operating the Waverider alone,
19 and further knowledge of the traffic in the waters on said date.

20
21 **PRAYER**

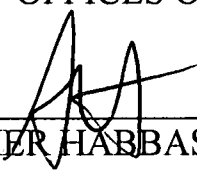
22
23 Wherefore, PLAINTIFF prays for judgment against each defendant as
24 follows:

- 25 1. For general damages, all in an amount to be proven at the time of trial;
26 2. For medical and related expenses, past, present, and future, all in an
27 amount to be proven at the time of trial;
28

3. For loss of earnings or earning capacity, past, present and future, all in an amount to be proven at time of trial;
4. For punitive ore exemplary damages where alleged against defendant Manual Soto Jr. and Juan Ramon Salazar,;
5. For a jury trial;
6. For costs of the suit incurred herein; and
7. For such other and further relief as the Court may deem just and proper,

Dated: June 3, 2008

LAW OFFICES OF SAMER HABBAS



SAMER HABBAS
Attorneys for David Santoyo

ORIGINAL

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

David Santoyo

(b) County of Residence of First Listed Plaintiff Riverside
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Samer Habbas, 7700 Irvine Center Drive, Suite 955
(949) 727-9300

DEFENDANTS

Manuel Soto, Jr., Juan Ramon Salazar, and James N. Silberman

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Sands Lerner, 12400 Wilshire Blvd., Suite 1300, Los Angeles, CA (310) 979-9144

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
46 U.S.C. section 740, et seq., 28 U.S.C. 1333(1)

Brief description of cause:

Incident took place on navigable waterway and thus controlled by federal maritime law.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/03/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

151584

AMOUNT

6350

APPLYING IFP

JUDGE

MAG. JUDGE

TAC

6/5/08

07

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

151584 - TC

**June 05, 2008
10:16:14**

Civ Fil Non-Pris

USAO #.: 08CV1000

Judge.: THOMAS J WHELAN

Amount.: \$350.00 CK

Check#.: BC2492

Total-> \$350.00

FROM: DAVID SANTOYO

VS

MANUEL SOTO JR., ET AL.